## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

DAVID MARTIN CHAVEZ,

Plaintiff,

VS.

CITY OF OSCEOLA; CITY OF OSCEOLA POLICE DEPARTMENT; STEPHEN NIEBUR, Individually and in his Official Capacity; FRANK TOWNSLEY, Individually and in his Official Capacity; and CHARLES BEEKER, Individually and in his Official Capacity,

Defendants.

No. 4:03-cv-40202

ORDER

This matter is before the Court on Plaintiff's motion to alter or amend the Court's July 7, 2004, order granting Defendants' motion for summary judgment. Defendants have resisted the motion. For the reasons discussed below, Plaintiff's motion to alter or amend is denied.

## I. APPLICABLE LAW AND DISCUSSION

"A motion to alter or amend a judgment under Rule 59(e) is intended to correct manifest errors of law or fact or to present newly discovered evidence." <u>Johnson v.</u>

<u>Chater</u>, 108 F.3d 942, 946 n.3 (8th Cir. 1997). "Arguments and evidence which could, and should, have been raised or presented at an earlier time in the proceedings cannot be presented in a Rule 59(e) motion." <u>Id.</u>

In support of his motion to amend, Plaintiff argues that he has produced sufficient evidence of employment policies and practices that were discriminatory against Plaintiff, that a genuine issue of fact exists as to whether Plaintiff performed his duties such that he should not have been terminated, and whether race and/or national origin was a motivating factor in terminating Plaintiff's employment even if there was a legitimate reason for his termination. Plaintiff specifically requests that the Court review the alleged reasons for terminating Plaintiff. Plaintiff states that it is in the interest of justice that the Court review the record and reconsider its ruling on summary judgment.

All of the arguments Plaintiff offers in support of his motion to amend were presented during the summary judgment stage of this litigation and considered by the Court at that time. Furthermore, Plaintiff has offered no evidence to demonstrate that any manifest errors of law or fact, or any newly discovered evidence, exists. Relief under Rule 59(e) is therefore not appropriate.

Plaintiff also requests that the Court clarify why the Court chose to make a distinction between circumstantial and direct evidence in light of <u>Desert Palace v.</u>

<u>Costa</u>, 539 U.S. 90 (2003). This request illustrates a fundamental misunderstanding both of the applicability of <u>Desert Palace</u> and of what this Court did in the analysis set forth in the prior order. The Plaintiff makes too much of the phrase "direct evidence" in the prior Order. That Order does not hold that a plaintiff could not rely upon circumstantial evidence but proceeds from the reality of an essential lack of support, direct or circumstantial, for this Plaintiff's claims.

In <u>Desert Palace</u>, the Supreme Court held that in a mixed motive discrimination case, a plaintiff is not required to present direct evidence. <u>Desert Palace</u>, <u>Inc. v. Costa</u>, 539 U.S. 90, 101-02 (2003) ("In order to obtain an instruction under [Title VII], a plaintiff need only present sufficient evidence for a reasonable jury to conclude, by a preponderance of the evidence, that 'race, color, religion, sex, or national origin was a motivating factor for any employment practice.""). Any distinction between circumstantial and direct evidence in mixed motive discrimination cases resulting from the Supreme Court's decision in <u>Desert Palace</u> is irrelevant under the facts of the case now before this Court. Plaintiff has failed to provide evidence, direct *or* circumstantial, from which a reasonable jury could logically infer that race was a motivating factor in his termination.

With regard to Plaintiff's retaliation claim, <u>Desert Palace</u> did not displace the <u>McDonnell Douglas</u> burden-shifting framework used in retaliation cases, and Plaintiff still bears the initial burden of proving a prima facie case.

Because [plaintiff] has only circumstantial evidence that [defendant]'s decision not to rehire her was the result of her complaints, we analyze her retaliation claim within the familiar framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). See Mayer v. Nextel W. Corp., 318 F.3d 803, 806-07 (8th Cir. 2003). The initial burden falls on [plaintiff] to establish a prima facie case of

<sup>&</sup>lt;sup>1</sup> In <u>Dunbar v. Pepsi-Cola General Bottlers of Iowa, Inc.</u>, 285 F. Supp. 2d 1180, 1190-2000 (N.D. Iowa 2003), Chief Judge Bennett provides an exhaustive and informative discussion about the impact of <u>Desert Palace</u> in employment discrimination litigation.

retaliatory discrimination. If she meets this burden, the burden shifts to [defendant] to demonstrate that its decision not to rehire [plaintiff] was based on legitimate reasons unrelated to retaliation. Should [defendant] demonstrate legitimate reasons for its decision, the burden shifts back to [plaintiff] to prove that these reasons were a mere pretext for a retaliatory motive.

Krough v. Cessford Const. Co., 336 F.3d 710, 712 (8th Cir. 2003); see also, Trammel v. Simmons First Bank of Searcy, 345 F.3d 611, 615 (8th Cir. 2003) ("To establish a prima facie case of retaliation, [plaintiff] had to show that he 'participated in a protected activity,' that the bank 'took an adverse employment action against [him],' and that there was a causal relationship between the two.") (quoting Calder v. TCI Cablevision of Mo., Inc., 298 F.3d 723, 731 (8th Cir. 2002)). As the Court discussed in its July 7, 2004, order granting Defendants' motion for summary judgment, Plaintiff failed to make out a prima facie case of retaliation.

## II. CONCLUSION

The Court finds no reason to amend its prior findings. Plaintiff's motion to amend or alter the Court's July 7, 2004, order (Clerk's No. 29) is therefore **denied.** 

## IT IS SO ORDERED.

Dated this 4th day of October, 2004.

UNITED STATES DISTRICT COURT